IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

RSA.No. 685 of 2007()

AS.89/2004 of ADDL.DISTRICT COURT (ADHOC)-III, THALASSERY
OS.214/2000 of ADDL.MUNSIFF COURT, KANNUR

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: APPELLANT/APPELLANT/PLAINTIFF

M.SAROJINI,
D/O.K.V.NARAYANAN,
HOUSEWIFE, AGED 42 YEARS,
RESIDING AT "SAROVARAM"
PAPPINISSERY AMSOM DESOM ,PASSINISSERY PO, KANNUR.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:RESPONDENTS/ DEFENDANTS

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1. M.DEVAKI, W/O. K.V.NARAYANAN,
MULLAN HOUSE,KARIKKANKULAM,PAPPINISSERY AMSOM &
DESOM, PAPPINISSERY WEST PO, KANNUR DISTRICT.

2. M.RAVEENDRAN, S/O. K.V.NARAYANAN,
MULLAN HOUSE, KARIKKANKULAM ,PAPPINISSERY AMSOM &
DESOM, PAPPINISSERY WEST PO, KANNUR DISTRICT.

3. M.RAJAN, @ BABU, S/O. K.V.NARAYANAN,
MULLAN HOUSE, KARIKKANKULAM,PAPPINISSERY AMSOM &
DESOM, PAPPINISSERY WEST PO, KANNUR DISTRICT.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.1425/2007 IN R.S.A.No.685/2007

27.9.07 Dismissed Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO.685 OF 2007

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Dated this the 27th day of September, 2007

JUDGMENT

Plaintiff in O.S.214/2000 on the file of Munsiff Court, Kannur is the appellant. Defendants are the respondents. Appellant instituted the suit for partition and separation of her share in plaint A and B schedule properties, which admittedly originally belonged to K.V. Narayanan. Appellant and respondents 2 and 3 are the children and first respondent the widow of Narayanan. K.V.Narayanan died on 12.10.1999 from A.K.G.Memorial Co-operative Hospital, Kannur. He was suffering from cancer. According to appellant, on the death of Narayanan, his rights devolved on all the children and widow and she is entitled to get her equal share. The suit was resisted by respondents contending that deceased Narayanan executed Ext.B1 registered will on 5.10.1999 whereunder he bequeathed the properties in favour

of respondents 2 and 3 and the will was executed by Narayanan in a sound disposing mind voluntarily and therefore appellant is not entitled to a share in the plaint schedule property.

2. Learned Munsiff on the evidence of Pw1 and Dws. 1 to 5 accepting the evidence on the side of respondents held that Ext.B1 will was executed by the deceased Narayanan of his free will and volition and he was in a sound disposing state of mind when the will was executed. It was also found that all the suspicious circumstance pointed out by appellants were explained by the respondents and hence plaint A schedule property is not available for partition and on the death of Narayanan his rights in the plaint B schedule property alone devolved on his widow and children and each of them is entitled to one share. Preliminary decree was passed. It was challenged in A.S.89/2004 before District Court, Thalassery. Learned District Judge on reappreciation of evidence found that findings of the trial court that Ext.B1 will

was executed by deceased Narayanan, out of his free will and volition is in accordance with the evidence and therefore on the death of Narayanan his rights in the plaint A schedule property will go to respondents 2 and 3 as provided in Ext.B1 will and only plaint B schedule property is available for partition. The appeal was dismissed confirming the preliminary decree. It is challenged in the second appeal.

3. Learned senior counsel appearing for appellant was heard.

4. The argument of learned senior counsel is that evidence of Dws.3 and 4 the attesting witnesses to Ext.B1 will establish that deceased Narayanan was not in a sound state of mind at the time of executing the will. It was argued that evidence on Dw3 shows that deceased Narayanan was not in a position even to understand what he was doing and his evidence establish that Narayanan was not in a sound disposing mind. It was also argued that evidence of DW4 is also insufficient to prove

that deceased Narayanan was in a sound disposing mind at the time of evidence and the courts below should not have relied on the evidence of DW5, doctor who had given evidence only with respect to Ext.X1 case record produced from the hospital.

5. On hearing learned counsel, I do not find any substantial question of law involved in the appeal. Ext.B1 is a registered will. Learned Munsiff elaborately considered the evidence of each witness examined and held that execution is proved. So also each and every circumstances, pointed out as suspicion was considered and found that all of them were properly explained. Learned Additional District Judge also appreciated the evidence in the proper perspective and held that Ext.B1 was executed by the testator and he was having a sound disposing state of mind at the time of execution of the will.

6. Though DW3 one of the attesting witness in fact supported the plaintiff and deposed that Narayanan was not having a sound disposing mind at

the time of execution of will, the fate of a will cannot be left at the mercy of an attesting witness. The oral evidence was analysed by courts below in the proper perspective and found that though Narayanan was sufferring from cancer, at the time when he executed Ext.B1 will he was having sound disposing mind. The medical evidence corroborated by records produced from the hospital supports the findings.

7. Learned senior counsel persuaded me to reappreciate the evidence. On going through the judgments of the courts below, I do not find that the appreciation of evidence was perverse warranting reappreciation of evidence in exercise of the powers of this court under section 100 of Code of Civil Procedure. The appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006